IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2490 of 1999

WITH

SPECIAL CIVIL APPLICATION NOS. 1995/99 AND 2496/99

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DS RANA & ORS.

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

Spl. C.A No. 2490/99 and 2496/99:

MR K.S. NANAVATI WITH MR C.G SHARMA for Petitioners
MR S.N. SHELAT WITH MR R.R MARSHALL for Respondent No. 1
MR D.P. JOSHI, ASSTT. GOVERNMENT PLEADER for Resp. State.

Spl. C.A No. 1995/99:

MR NIRAV MAJMUDAR for MR P.B. MAJMUDAR for Petitioners
MR S.N. SHELAT WITH MR R.R MARSHALL for Respondent No. 1
MR D.P. JOSHI, ASSTT. GOVERNMENT PLEADER for Resp. State.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE J.R.VORA
Date of decision: 13/09/1999

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

This group of petitions raises the question whether a local authority can impose a condition while issuing a trade licence that the trade or its operation which in the opinion of the Commissioner, is dangerous to health, life or property or likely to create nuisance either from its nature or by reason of the manner in which or the conditions under which the same is or is proposed to be carried on, can be carried on only in an industrial zone, thereby prohibiting such trade or operation to be carried on in other areas including residential areas.

2. In this set of three petitions, the lead matter being Special Civil Application No. 2490 of 1999 has been filed by thirty three petitioners against the Ahmedabad Municipal Corporation, Deputy Health Officer of the Corporation and the State of Gujarat, seeking a direction on the respondents to renew the licences of the petitioners as required under the provisions of The Bombay Provincial Municipal Corporation Act, 1949 and for quashing and setting aside the impugned notices dated 18th March, 1999 of the nature at Annexure "F" to the petition and the impugned orders dated 31st March, 1999 of the nature at Annexure "I" to the petition. According to the petitioners their trade or business of melting gold and silver is done since several decades under licences given to them under Section 376(1) and it does not cause any nuisance or health hazard in the locality in which it is carried on. It is alleged that the impugned action is arbitrary, violative of principles of natural justice, excessive and unwarranted and takes away their fundamental right to do business or trade guaranteed by Article 19(1)(g) of the Constitution.

3. Special Civil Application No. 2496 of 1999 is preferred by the Gujarat Bullion Refinery, being a Partnership firm for the reliefs which are identical to those framed in Special Civil Application No. 2490 of 1999.

4. Special Civil Application No. 1995 of 1999 has

been filed by fortysix persons seeking similar reliefs and claiming trade licences to be issued to them for the said business and challenging the show cause notices and the orders similar to those as are challenged in the other petitions, requiring them to close down their trade and operations of gold and silver melting and refineries at the places where it was being carried on by them without a licence, in view of the decisions taken by the local authority.

5. The contentions which were raised on behalf of the petitioners of Special Civil Application Nos. 2490 of 1999 and 2496 of 1999 by their learned Counsel were adopted by the learned Counsel who appeared for the petitioners in Special Civil Application No. 1995 of 1999 and he supplemented those contentions.

6. By the notice at Annexure "F" dated 18th March, 1999, being the type of notice issued to all the petitioners, the petitioners were informed that their trade operations were causing nuisance as detailed in the show cause notice and were hazardous to health for the reasons mentioned therein and also caused environmental pollution and therefore, the petitioners should show cause as to why their licence should not be cancelled in the interest of public health. Alongwith the notice was, attached Schedule-A, which contained the findings reached by the National Institute of Occupational Health, which had carried out a detailed study of various silver foundries in the areas where the petitioners used to carry out their trade activities. The Institute had concluded that the overall industrial hygiene conditions prevailing in the silver foundries are very bad, illumination is also very poor and the problem of heat stress, respirable dust and fumes containing metals especially cadmium and lead is of serious concern. The gist of the report was mentioned in Schedule-A to the show cause notice. A reply was sent on 23rd March, 1999, in response to the show cause notice by the petitioners and a copy of one such reply is at Annexure "G" to this petition. By that reply, the petitioners inter-alia called upon the respondent authority to furnish particulars on the basis of which they alleged that these units of gold and silver melting and refineries were causing nuisance and health hazards as alleged in the show cause notice. Thereafter, the Ahmedabad Bullion Meltors' Association sent a representation dated 25th March, 1999 to the Chairman of the Standing Committee of the Ahmedabad Municipal Corporation, after appearing in person on 22.3.1999, as stated therein, requesting for the issuance or renewal of the licences to these traders

who were doing the trade or operations connected with the trade in gold and silver melting and refineries. Thereafter, an order was made on 31st March, 1999 by the Deputy Health Officer, who exercised powers of the Municipal Commissioner delegated to him, cancelling the licences of the petitioners, requiring them to stop the said trade, on the basis of the resolution of the Standing Committee dated 26.2.1999, by which it was decided that the trade of gold and silver melting and refining could not be carried on at any place other than an industrial zone under a licence. It appears that by office order No. 3053 dated 9th July, 1990, a copy of which was placed on record with an affidavit of the Deputy Health Officer of the Corporation, the Municipal Commissioner, in exercise of his powers under Section 69(1) of the Bombay Provincial Municipal Corporation Act, 1949, had empowered the Deputy Health Officer or the Additional Health Officer in respect of the respective zone placed under him, to exercise, perform or discharge the powers, duties or functions conferred, imposed upon or vested in the Municipal Commissioner by or under the said Act as per the Schedule appended to the order, which included issuance of licences and permits under Chapter XXII as specified therein. It also appears that the Municipal Commissioner had put up a note on 6th March, 1999, proposing to the Standing Committee to take a policy decision of not issuing any licence in respect of trades or operations connected with gold and silver melting and refineries except for an industrial zone and not to allow it at any other place and to cancel such licences which were already granted and to effect closure of such refineries and furnaces. He also proposed change in the licensing rules, keeping in view the recommendations of the National Institute of Occupational Health. A resolution came to be passed by the Standing Committee, being Resolution No. 1314 dated 26.3.1999 by which considering the Health Committee's resolution No.77 of 18.3.1999, the Municipal Commissioner's proposal dated 6th March, 1999, the representations made by the Association of the Ahmedabad Bullion Refineries Association, including their written representation dated 25th March, 1999, resolving to empower the Municipal Commissioner to take necessary steps in the matter, in light of the expert report of the National Institute of Occupational Health, Ahmedabad, for not issuing such licence except in respect of an industrial zone and for cancellation of the existing licences. The resolution of the Standing Committee was approved by the General Body of the Municipal Corporation on 22.4.1999, by its resolution No.33, a copy of which is also placed on record alongwith the affidavits of the Deputy Health

Officer. Thus, the stand taken up by the respondent authorities is that in view of the health hazards and nuisance created by carrying on the said trade and its operations in the thickly populated area in which they were hitherto located, the local authority has taken a policy decision to confine such activities to an industrial area only, by imposing a condition to that effect in the licences, which are required to be issued under Section 376 of the Act.

7. Before we proceed to consider the rival contentions, we may take note of the fact that by Special Civil Application Nos. 9322/97, 1467/98 and 1368/98, as also in Special Civil Application No. 1364/98, the petitioners had earlier approached this Court on the ground that they were carrying on the business of melting of old silver/gold articles within the city area mentioned therein for last about five decades and that they were not creating any nuisance and therefore, they were entitled to the issuance of licences for such trade. In that group of petitions also it was contended by the local authority that the petitioners were carrying on their business illegally in a very densely populated region and this results in an unhygienic environment, nuisance and inconvenience and health hazard to the residents of the area. It was contended that the activity of melting gold and silver ornaments by running furnaces in residential houses, caused great inconvenience and nuisance of heat, noise, dirty stink due to use of acid which also damage the drainage line and was increasing the chances of respiratory track infection and eye diseases to the inhabitants of the locality. It was pointed out that the Municipal Corporation had passed a resolution No. 68 on 31.1.1997 to get a study made of the consequences of running such silver melting furnaces in the residential area and the health hazards created thereby, through the National Institute of Occupational Health and for stopping all such furnaces which were operating without a valid licence. The learned Single Judge, in his order dated 16th March, 1998, made in those petitions observed that the power of judicial review in such matters was limited and that the Court would not sit in appeal over the decision of administrative authorities in such matters decided under Section 376 of the said Act. However, since the petitioners and similarly situated persons were carrying on their business since many decades, the learned Single Judge found it just and proper to give them one more opportunity to make improvements in the manner in which or the conditions under which they were carrying on their business. The Court directed the

petitioners not to carry on any business of melting of silver and gold in the premises for the period from 1.4.1998 to 30.4.1998 and thereafter, they were required to apply for licence under Section 376 of the Act. Thereafter, from 1.5.1998, the respondents were to permit the petitioners to carry on the business for a limited period of one month for ascertaining as to whether the business carried on by them caused any nuisance or health hazard to the persons in the neighbourhood. It was directed that it was open for the petitioners to produce expert opinion and other material to show that no such nuisance or health hazard was caused. The respondents were required to consider the applications of the petitioners for grant of licence for carrying on business of melting silver and gold on merits, in accordance with law. It was made clear in paragraph 12 of the said order that the Court was not sitting in appeal over the decision of the administrative authorities and these directions were given only to give one more opportunity to the petitioners and not with a view to give the petitioners another round of litigation. As noted above, after this order, show cause notice was issued to all these petitioners and the Standing Committee of the Corporation, on the basis of the proposal made by the Municipal Commissioner, took a policy decision of not allowing such activity in the areas in which they were being carried on within the city, by imposing a condition in the licence that it could be carried on only in an industrial zone.

8. Detailed arguments were canvassed by both the sides and the matter was finally argued both the sides at the admission stage itself. The learned Senior Counsel appearing in Special Civil Application Nos. 2490/99 and 2496/99, contended that the licences of the petitioners of Special Civil Application No. 2490/99 were valid upto 31.3.1998 and were not renewed thereafter except in petitioner No.3, whose licence was operative till 31.3.2000 and was cancelled. The licences of the petitioners of Special Civil Application No. 2496/99 were valid upto 31.3.1999 and thereafter they were not renewed. The Counsel for the petitioners of Special Civil Application No. 1995/99 submitted that these fortysix petitioners had no licences earlier, but their applications for licence were rejected in view of the impugned decision.

8.1 The questions involved in these three petitions are identical. It was contended by the learned Counsel for the petitioners that the Municipal Commissioner has exceeded his authority in stopping the business of

melting gold and silver by the petitioners. It was argued that the Corporation has no power to stop any business and all that it can do, is to impose terms and conditions in a licence which it is required to issue. It was submitted that in cases where the licence was earlier issued, the Commissioner is deemed to have made up his mind that the said trade or its operations were not inherently dangerous. Earlier, no such condition of carrying on such trade or operations in an industrial zone was ever imposed and licences were being issued, on the basis of which the business could be carried on in these areas of Manekchowk etc. within the city of Ahmedabad. It was submitted that when for several decades the Commissioner did not find anything objectionable against carrying on these activities in Manekchowk and other areas of the city, he could not have now insisted that the activity should be carried on only in an industrial zone. It was argued that on the basis of the legitimate expectation that all these traders had, in view of they being allowed to carry on their activities nearly for five decades, the Municipal Commissioner cannot make such a sudden shift by imposing a condition which had the effect of prohibiting the said trade at all places other than an industrial zone. It was submitted that the Commissioner had therefore, exercised his discretion of imposing such a condition arbitrarily and in violation of the fundamental rights of the petitioners guaranteed by Articles 14 and 19(1)(g) of the Constitution. It was argued that the petitioners have a right to carry on the said trade, which was being taken away by imposing such prohibition, which was not a reasonable restriction. It was submitted that any condition which was arbitrary or unreasonable or imposes any excessive restriction on the right to trade of the petitioners was not warranted by the provisions of Section 376(1)(d)(ii) of the Act. Initially, it was sought to be contended that the Deputy Health Officer could not have issued the impugned order and that the resolution of the Standing Committee was subject to the Corporation's approval, but these contentions were given up when the orders showing the authorisation of the Deputy Health Officer and the resolution of the Municipal Corporation approving the resolution of the Standing Committee, were placed on record.

8.2 The next important contention raised by the learned Counsel for the petitioners was that in making the impugned decision of prohibiting the activity in places other than the industrial zone, which had the net effect of refusing the licences or their renewal in respect of the places other than the industrial zones for

doing the said trade or business in gold and silver melting and refining, was violative of principles of natural justice, as the material which was sought to be relied upon for reaching its decision by the local authority, was not supplied to the petitioners though it was sought and that no proper hearing was given to the petitioners. It was contended that the report of the National Institute of Occupational Health on "HEALTH HAZARDS IN AND AROUND SILVER FOUNDRIES IN AHMEDABAD" was not given to the petitioners with the show cause notice, nor was the material on the basis of which the said report was prepared by the experts, supplied to the petitioners. It was therefore, submitted that the decision taken by the local authority in the matter was void, as the same has contravened the principles of natural justice requiring an adequate opportunity of hearing to be given to the petitioners before taking an adverse decision, which had the effect of denying the licence or renewal of the licence for such trade in the areas other than industrial zone and in which the trade or business was being carried on for nearly five decades. It was submitted that the decision which had the effect of prohibiting the said trade or business activity in areas other than the industrial zone was an arbitrary decision based on insufficient material and was taken without considering other material which would have shown that by certain regulations the business could have been carried on at the same places. It was also argued that even if the decision was assumed to be a change in policy, it was essential for the local authority to have heard the petitioners. It was submitted that the restriction imposed was totally disproportionate to the mischief which was sought to be remedied and the work could have been allowed to be carried on with some additional safeguards at the same place where it was being done for all these years. It was contended that the impugned order was vague and cannot be said to be a policy decision.

9. In support of their contentions, the learned Counsel for the petitioner placed reliance on the following decisions:-

(a) Decision of the Supreme Court in Express Newspaper Ltd. Vs. Union of India, reported in AIR 1958 S.C 578 was relied upon in support of the contention that the phrase `reasonable restriction' in clause (6) of Art. 19 connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required

in the interest of the public.

(b) Paragraphs 6, 7 and 8 of the decision in Chintamanrao Vs. State of Madhya Pradesh, reported in AIR 1951 S.C 118 were relied upon in support of the contention that a prohibition which is arbitrary in nature and has no relation to the object which the legislation seeks to achieve, cannot be said to be a reasonable restriction on the exercise of the right.

(c) Reliance was placed on the decision in State of Assam Vs. Bharat Kala Bhandar Ltd., reported in AIR 1967 S.C 1766, which was rendered in context of sub-rule (4) of Rule 126-AA of the Defence of India Rules, 1962, and in which it was held that the power conferred which was of wide and far reaching effect could not be exercised purely on subjective satisfaction of the authority and that before the Government exercised power under sub-rule (4), it should even in a real emergency, consult the interested concerned before taking action thereon.

(d) Reference was made to the decision in M/s. North Bihar Agency and ors. Vs. The state of Bihar and ors., reported in AIR 1981 S.C 1758, in which the Court was satisfied that no proper opportunity was given to the appellants before their licences were cancelled and additional material was not furnished to them and the order of the State's Drug Controller and the appellate authority were set aside with a direction to proceed afresh in the matter of cancellation of the licence, after giving the petitioners proper opportunity of hearing and following the principles of natural justice. In that case, the appellate authority was greatly influenced by the fact that four drugs resembling the reputed drugs, which were sent to the Central Drugs Laboratory for test, were declared not to be of standard quality. This aspect of the matter was not mentioned in the show cause notice and the report of the laboratory test was not furnished to the petitioners.

(e) Decision in M.C. Mehta (Taj Trapezium Matter) Vs. Union of India and ors. reported in (1997) 2 S.C.C 353 was referred to for contending that with proper changes and safeguards, the petitioners could have been allowed to carry on

their business at the same place. In that case the Supreme Court had directed that the relocation of the industries from Taj Trapezium Zone was to be resorted to only if the natural gas which has been brought at the doorstep of Taj Trapezium Zone was not acceptable or available by/to the industries as a substitute for coke/coal.

(f) Reference was made to the decision of the Supreme Court in Punjab Communications Ltd. Vs. Union of India, reported in AIR 1999 S.C 1801, in which it was held that the doctrine of legitimate expectation in the substantive sense has been accepted as a part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way.

(g) Decisions in M.C. Mehta Vs Union of India, reported in 1998 (9) S.C.C 149 and reported in (1996) 4 S.C.C 750, were relied upon to show and contend that the petitioners ought to have been relocated at some suitable place and that they should be given incentives which are normally extended to new industries in new industrial estates.

(h) Decision of the Supreme Court in Olga Tellis and ors. Vs. Bombay Municipal Corporation, reported in AIR 1986 S.C. 180, was referred to for its proposition that any action taken by a public authority which is invested with statutory powers, has to be tested by the application of two standards: the action must be within the scope of the authority conferred by law and secondly, it must be reasonable.

(i) Decision of the Supreme Court in Hari Chand Sarda Vs. Mizo District Council and anr. reported in AIR 1967 S.C 829 was referred to, for its proposition that regulation which leaves to licensing authority unrestricted power in the matter of granting or refusing licence or its renewal to non-tribal trader was violative of Art. 19(1)(g) of the Constitution of India.

10. The learned Counsel appearing for the respondent

local authority and it's official pointed out from the record that various complaints were received in year 1991 onwards against the health hazards and nuisance caused by the business activity of the petitioners of melting and refining gold and silver in the areas in question. He referred to the earlier petitions which were filed and in which Hon'ble Mr.Justice M.S.Shah, gave directions on 16th March, 1998, which we have already noted above. He pointed out that in Letters Patent Appeal No. 505/98 decided on 16.6.1998, that earlier decision was confirmed with slight modification in the order of the learned Single Judge and an observation that the authorities, while taking the decision afresh, will not be influenced by any of the observations made in the order dated 16.3.1998. It was argued that in the show cause notice the gist of the report of the National Institute of Occupational Health was annexed and the petitioners were personally heard on 22.3.1999 by the Chairman of the Standing Committee, as admitted in their own communication dated 25th March, 1999, sent through their representative Association. It was contended that after taking into account their representation dated 25th March, 1999 and all other relevant aspects of the matter, the impugned decision dated 31.3.1999 was taken by the local authority refusing licences except for the industrial zone in respect of this trade or operation carried out by the petitioners of gold and silver melting and refining. It was argued that the local authority had taken a policy decision of not issuing or renewing licences for the trade or operation of gold and silver melting and refining in the residential or commercial zones and that such policy was in the interest of general public with a view to ensure prevention of nuisance and health hazards. It was submitted that such a policy cannot be said to be irrational or illegal and the Municipal Commissioner was within his bounds in making the impugned orders, on the strength of that policy decision, under Sections 376 and 376A of the said Act. It was submitted that a fair hearing was given to the petitioners and it was not incumbent upon the local authority to furnish the material on the basis of which the expert body had given its opinion. It was also argued that, a policy can be changed in the interest of general public. The learned Counsel pointed out that as per the study of the National Institute of Occupational Health, the local authority was fortified in its view that such trade or operation should be carried on in an industrial zone away from commercial and residential areas. The learned Counsel for the respondent Corporation referred to the following decisions in support of his contentions:-

(a) Relying upon the decision of the Supreme Court in T.B. Ibrahim Vs. The Regional Transport Authority, reported in AIR 1953 S.C 79, it was contended that there was no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority under the law in the interest of public convenience.

(b) Relying upon the decision of the Supreme Court in Cooverjee B. Bharucha Vs. Excise Commissioner and the Chief Commissioner, Ajmer & ors., reported in AIR 1954 S.C 220, it was submitted that the right of every citizen to pursue any lawful trade or business was obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community. In that judgement, construing the provisions of Article 19(1)(g) and Clause 6 thereof, the Hon'ble the Supreme Court observed that some occupations by the noise made in their pursuit, some by the odours they generate, and some by the dangers accompanying them, require regulations as to the locality in which they may be conducted.

(c) Reliance was placed on the decision of the Bombay High Court in Govindji Vithaldas & Co. Vs. The Municipal Corporation of the City of Ahmedabad, reported in AIR 1959 (Bombay) 26, in which construing the provisions of Section 376(5) of the said Act, the Chief Justice M.C. Chagla, speaking for the Bench, held that it was erroneous to suggest that an arbitrary and unbridled discretion has been conferred upon the Municipal Commissioner to refuse a licence under Section 376(5) to a person who applies for it. It was held that where the Court can discover a policy underlying the law and if a discretion was conferred under that law, then the Court must hold that the discretion was to be exercised not in an arbitrary or in a capricious or in an uncontrolled manner, but in a manner so as to effectuate the policy of the law. In issuing a licence or withholding a licence the Municipal Commissioner was effectuating the policy of the law which was to regulate all businesses which are likely to be a nuisance in the wide sense in

which that word is defined in Section 2 (40) of the Act. It was held that Section 376 of the said Act did not constitute an unreasonable restriction upon the fundamental right of a person to carry on business guaranteed by Article 19(1)(g) of the Constitution. He too relied upon the decision in Punjab Communications Ltd. (supra) for its proposition that the change in policy can defeat a substantive legitimate expectation if it can be justified on Wednesbury reasonableness.

(d) Decision in Shri Sachidanand Pandey and anr. Vs. The State of West Bengal, reported in AIR 1987 S.C 1109, in which it was observed that whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48-A of the Constitution was referred to by the learned Counsel. It was observed therein that when the question involves the nice balancing of relevant considerations, the Court may feel justified in resigning itself to acceptance of the decision of the concerned authority.

(e) Decision in S. Jagannath Vs. Union of India & ors., reported in JT 1997 (1) S.C 160, where the Supreme Court referring to the provisions of Articles 48A and 51A of the Constitution, observed that environment protection is governed by the fundamental provisions of the Constitution was also cited.

(f) Decision in A.P. Pollution Control Board Vs. Prof. M.V. Nayudu, reported in AIR 1999 S.C 812, was referred for its proposition that it is necessary that the party attempting to preserve a less polluted State, should not carry the burden of proof and the party who wants to alter it, must bear this burden. It was held that the precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment.

(g) Decision in Krishnan Kakkanth Vs. Government of Kerala, reported in AIR 1997 S.C 128, was cited in support of the contentions that the reasonableness of restriction is to be determined in an objective manner and from the stand point

of the interests of general public and not from the stand point of the interests of the persons upon whom the restrictions are imposed or upon abstract consideration. It was observed therein that a restriction cannot be said to be unreasonable merely because in a given case, it operates harshly and even if the persons affected be petty traders.

(h) Decision in State Bank of Patiala and ors. Vs. S.K. Sharma, reported in AIR 1996 S.C 1669 was cited on the aspect of fair hearing to a delinquent, referring to paragraph 5 of the judgement.

(i) Relying on the decision of the Supreme Court in Rajendra Singh Vs. State of Madhya Pradesh, reported in AIR 1996 S.C 2736, he contended that the function of the Court where it is alleged that there was breach of the principle of natural justice of giving a hearing was not a mechanical one, but it was always a considered course of action.

(j) Decision in M.C Mehta Vs. Union of India, reported in J.T 1999 (5) S.C 114, was cited to show that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioners in breach of natural justice.

(k) He also referred to the decision of House of Lords in Bushell and anr. Vs. Secretary of State for the Environment, reported in (1981) AC 75 at 101, where the House of Lords held that what is the fair procedure would depend upon the subject matter of the particular enquiry and was to be judged in the light of the practical reality of the way in which administrative decisions involving the judgements based on technical considerations were reached.

(l) He also referred to the decision of the Supreme Court in Delhi Science Forum and ors. Vs. Union of India, reported in (1996) 2 S.C.C 405, which approvingly cited Morey Vs. Doud, in which Frankfurter,J. said "in the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgement and the legislature after all has the affirmative

responsibility. What was said in respect of legislations was applicable even in respect of policies which have been adopted by the Parliament."

(m) Decision in State of U.P. Vs. Dharmander Prasad Singh, reported in AIR 1989 S.C 997, in which the Supreme Court held that judicial review under Article 226 cannot be converted in to an appeal, was also shown to us.

11. We have kept the principles laid down in the aforesaid decisions of Hon'ble the Supreme Court cited by both the sides, in our mind and we now proceed to consider as to whether the impugned action of the local authority is warranted or not.

12. At the outset, we may refer to certain relevant provisions of the said Act, which will have a bearing on this matter. Section 2(40) defines `nuisance', so as to include any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing or which is or may be dangerous to life or injurious to health or property. Chapter VI of the said Act lays down duties and powers of the Municipal authorities and the officers, and, under Section 63(1), it is made an obligatory duty of the Corporation to make reasonable and adequate provision, by any means or measures which it is lawfully competent to use or to take, inter-alia, for the regulation and abatement of offensive and dangerous trades or practices and generally the abatement of all nuisance. Under Section 69, the Municipal Officers may be empowered to exercise certain powers, duties or functions of the Commissioner.

12.1 Sections 376 and 376A to the extent to which they are relevant for our purpose, are reproduced hereunder:-

" 376.(1) Except under and in conformity with the terms and conditions of licence granted by the Commissioner, no person shall--

(a) xxx xxx
(b) xxx xxx
(c) xxx xxx
(d) carry on, or allow to be carried on, in or upon any premises --

(i) xxx
(ii) any trade or operation which in

the opinion of the Commissioner is dangerous to life or health or property, or likely to create a nuisance either from its nature, or by reason of the manner in which or the conditions under which, the same is, or is proposed to be, carried on;

(2) xxxx xxxx
(3) xxxx xxxx
(4) xxxx xxxx
(5) It shall be in the discretion of the Commissioner --

(a) to grant any licence referred to in sub-section (1) subject to such restrictions or conditions (if any) as he shall think fit to prescribe, or

(b) to withhold any such licence. "

"376A. Whenever the Commissioner is of opinion that the use of any premises for any of the purposes specified in sub-section (1) of Section 376 is dangerous to life, health or property or is causing a nuisance either from its nature or by reason of the manner in which or the conditions under which the use is made and such danger or nuisance should be immediately stopped, the Commissioner may, notwithstanding anything contained in Section 376, require the owner or occupier of the premises to stop such danger or nuisance within such time specified in such requisition as the Commissioner considers reasonable and in the event of the failure of the owner or occupier to comply with such requisition, the Commissioner may himself or by an officer subordinate to him cause such use to be stopped."

13. The local authority has in its affidavit-in-reply, denied that the petitioners were carrying on business since fifty years and has alleged that some of them had started their business in recent times only. In the affidavit-in-reply filed on 12.4.1999, the Deputy Health Officer of the Corporation has stated that the petitioners were carrying on business in a very densely crowded, congested and thickly

populated region, which resulted in unhygienic environment, nuisance, inconvenience and health hazard to the residents of the area. It is stated that some of the houses are situated in narrow lanes which hardly have any breadth and their areas varied from 6' x 8' to 15' x 20', and, as a result thereof, the heat and fumes generated by the furnaces was transmitted through these houses to the adjacent houses creating nuisance and hardship to the neighbours. It is stated that when the furnaces are used, lot of smoke is emitted with carbon particles and noise and dirty stinks were created. The whole area where the business was carried on was polluted because of smoke and dust. It is pointed out that several representations and complaints were received in this regard and after weighing the pros and cons and after visiting the affected sites, the Corporation in 1997 took a decision that this hazardous business should not be allowed to continue. Pursuant to the decision, the Standing Committee of the Corporation passed a resolution to the effect that no further licence should be given for this business and the existing ones should not be renewed, in residential and commercial localities. That decision of the Standing Committee dated 6.3.99 is annexed at Annexure "B" to this affidavit. It is further pointed out that the Corporation had sponsored a study on Health Hazards in and around Silver Foundries in Ahmedabad, which was conducted by the National Institute of Occupational Health and its report was submitted by the Director of that Institute on 11.1.1999 to the Corporation. That report in detail indicates the adverse effect that the running of these foundries had on the environment and the health of the people living in those areas. That report is placed on the record of these proceedings.

13.1 The conclusions and recommendations of that report, which are significant in the present context, are reproduced hereunder:-

"8. CONCLUSIONS:

8.1 Overall, industrial hygiene conditions prevailing in the silver foundry units are very bad. Illumination is also very poor. Problem of heat stress, respirable dust and fumes containing metals especially cadmium and lead is of serious concern.

8.2 The levels of toxicants like cadmium and lead are very high in the vicinity. They are detrimental to human health. Similarly, biological

monitoring of silver foundry workers as well as residents of the vicinity suggested high levels of blood cadmium and blood lead. This is due to emission of metal fumes at work places and its dispersion in the vicinity through the local exhaust, without air cleaning device installed at present in foundry units. Exposure of these metals is of great concern as there is exposure of more vulnerable groups such as children, elderly sick persons and pregnant women.

8.3 No conclusive results were available from medical study on subjects, but keeping in view the pertaining high levels of toxic substances in environment and blood of subjects, adverse health effects are most likely to be observed in them if a long term follow up study of these subjects is done.

9. RECOMMENDATIONS:

9.1 Silver refining should be declared as hazardous process under Section 2(cb) of Factories Act, 1948 and it should be brought under the provisions of Factories Act by Chief Inspector of Factories using his power under Section 85 of Factories Act, 1948.

9.2 Silver foundry operation should be carried in industrial zone, away from commercial and residential areas.

9.3 All the units should be equipped with local exhaust system with air cleaning device.

9.4 There should be pre-employment and regular periodical medical examination of the foundries workers including biological monitoring for toxic metals.

9.5 Periodical assessment of work place monitoring should be carried out.

9.6 Detailed periodical assessment of surrounding areas should be carried out for toxic metals.

9.7 Workers and other concerned personnel should be given health education.

9.8 Subjects having high level of cadmium and lead in blood should be removed from further exposure and

a follow up examination of further health effects should be carried out in them."

14. It is pointed out that a show cause notice was issued to the petitioners as to why their business should not be shut down and a reply was sent by them. The petitioners remained present and represented their case before the Corporation. Having regard to the totality of these circumstances, namely the nuisance and health hazards caused by this trade and further taking into consideration the petitioners' case and also the report prepared by the National Institute of Occupational Health, particularly the recommendations made therein, the Corporation was convinced that the continuous operation of this trade in the residential and commercial areas was likely to cause health hazards and nuisance to the people living in such area, as also health hazards to the employees. In the further affidavit-in-reply sworn by the Deputy Health Officer on 5th May, 1999, it has been stated that even in the report which was prepared by Messrs Envirotech Centre for Research and Development, on which the petitioners had relied, it was concluded that the existence of this industry was a health hazard and a polluting factor. It was submitted that chemicals like acid and caustic soda discharged as effluent by these units would destroy the Municipal drainage system. In the further affidavit of the Deputy Health Officer sworn on 27th August, 1999, it was pointed out that the Municipal Commissioner, by his order dated 16.9.1990, had delegated powers vested in him under Section 69(1) of the Act to the Deputy Health Officer in respect of the respective zones placed under him. It is stated that the Municipal Commissioner on the basis of the relevant material mentioned, was of the opinion that no new licence should be given in favour of the units for operation in residential and commercial zones, that the existing licences were required to be revoked and cancelled and that the conditions for granting new licences were required to be modified and the Municipal Commissioner's views were forwarded for further consideration of the Health Committee. The Health Committee, which is the representative section of the Corporation for advising the local authority in respect of health hazards considered the contents of the Commissioner's letter and in its meeting held on 18th March, 1999, accepted it. It is stated that the recommendation of the Health Committee were further submitted before the Standing Committee at its meeting held on 26.3.1999, which resolved that the existing industrial units should be shifted to industrial area, that licences for such units should be given for

operating only in industrial zone, that the existing licences should be revoked and that there should be modifications in the terms of licence. This resolution was subsequently placed before the Corporation and approved by it as stated in paragraph 6 of this affidavit-in-reply. The Commissioner's opinion and the resolution of the Standing Committee of the Corporation, which are mentioned in paragraph 6 to the affidavit have been annexed with it.

15. The State Government, by an affidavit filed by the Deputy Secretary, Forest and Environment Department, made it clear that the Department was of the view that the gold and silver foundries were required to be shifted from Manekchowk area as they were harmful to human beings and there was no other measure available except shifting those units. It is stated that the Government approved the recommendation for shifting these silver foundries from the Manekchowk area. It is thus contended by the respondent authorities that the impugned action is a result of the policy of allowing such trade only in an industrial zone under a licence.

16. A policy is a course or principle of action adopted or proposed by the policy maker. The Constitution delineates certain fundamental policy guidelines for the governance of the country in Part-IV and it is made the duty of the State to apply those principles. The expression "State" has the same meaning as in Part-III under which the fundamental rights are guaranteed and it includes all local authorities. By Article 39(e), the State is, inter-alia, enjoined with a duty to direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused. Under Article 47, it is the duty of the State to safeguard the improvement of public health as among its primary duties. The State shall make provision for securing just and humane conditions of work under Article 42 of the Constitution. It is also required to endeavour to project and improve the environment by Art. 48A of the Constitution. Correspondingly, there is a fundamental duty cast on every citizen to protect and improve the natural environment by Art. 51A(g) of the Constitution. In furtherance of this Constitutional policy, with a view to take appropriate step for protection and improvement of human environment and prevention of hazards to human beings, the Parliament has enacted The Environment (Protection) Act, 1986. The ambit of the fundamental rights of citizens to practise any profession or to carry on any occupation, trade or business guaranteed by

Article 19(1)(g) is to be governed by the reasonable restrictions on its exercise imposed by law in the interest of general public. The expression "reasonable restrictions" signifies that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature. It is one of the Constitutional responsibilities of a Municipality under Article 243-W to discharge its functions under the law aimed at achieving social justice, and public health protection of the environment and promotion of the ecological aspects which are, inter-alia, specified at items 6 and 8 of the Twelth Schedule to the Constitution.

16.1 The obligatory duties of the Municipal Corporation under Section 63 of the Act, include a duty to make a reasonable and adequate provision for the regulation and abatement of all nuisances as provided in sub-clauses (10) and (16) thereof. The matters in respect of which rules can be made by a Municipal Corporation, include prevention of nuisance and prevention and regulation of the discharge of smoke, steam, fumes and noxious vapours, as provided in sub-clauses (d) and (k) of Sec. 457(13) of the Act. It can make bye-laws for the control and supervision of all the premises used for any of the purposes mentioned in Section 376 of the Act and of all the trades and manufactures carried thereon under Section 458(20) of the Act.

16.2 Under Section 376(1)(d) of the Act, no person shall, except and in conformity with the terms and conditions of licence granted by the Commissioner, carry on or allowed to be carried on in or upon any premises any trade or operation which in the opinion of the Commissioner is dangerous to life or health or property or is likely to cause a nuisance either from its nature or by reason of the manner in which or the conditions under which, the same is, or is proposed to be carried on. The Commissioner has a discretion to grant a licence under Section 376(5) of the Act, subject to such restrictions or conditions (if any) as he shall, think fit to prescribe, or to with-hold any such licence. In our opinion therefore, it would obviously be a sound exercise of discretion if trade licence is withheld on the ground of abatement or prevention of nuisance or health hazards and protection of environment, which are the obligatory duties of the Corporation under the Constitution and the law. The power to with-hold a licence would include power not to issue or renew a licence. Therefore, the Commissioner can refuse to issue or renew a trade licence for carrying out an activity

that may be hazardous to the residents of the area for which it is proposed or creates public nuisance or pollutes the environment.

17. The contention that the impugned condition is not a reasonable restriction on the fundamental right of the petitioners to carry on trade or business is not well founded. A reasonable restriction may take form of total prohibition of the trade activity in a particular area on the ground that it is likely to be injurious to the health of its residents or cause nuisance. The policy of forming industrial, commercial and residential zones would be a rational policy for an orderly growth and would be in the interest of general public for variety of its advantages aimed at social welfare. The discretion vested in the Commissioner of with-holding licences can be exercised keeping in view the statutory policy which imposes an obligation on the local authority to take measures for the regulation and abatement of offensive and dangerous trades or practices, the abatement of all nuisances, and preventing and checking spread of dangerous diseases. This is in consonance with the directive principles of State policy, which make improvement of public health as amongst the primary duty of the State and the responsibilities of a Municipality under Article 243-W of the Constitution read with the Twelth Schedule. A decision taken in furtherance of any directive principles contained in Part IV of the Constitution and other Constitutional and Statutory provisions cannot be termed as unreasonable. Such decision can be justified on important competing public interest. The exercise of discretion for achieving the object of abatement of nuisance and safeguarding public health would be per-se reasonable being warranted by the Constitutional and Statutory policy that guides the exercise of such discretion. Thus, once the Commissioner forms a bonafide opinion that any trade or operation is dangerous to life or health or likely to create a nuisance, he may with-hold grant of licence for such trade, or make it conditional by providing that such trade or operation shall be done only in an industrial zone, thereby prohibiting it in a residential or in commercial area for preventing danger to life and health of its inhabitants and pollution and stopping nuisance. Such opinion of the Commissioner can be formed on the data available to him that warrants the imposition of such restriction while issuing the licence. In fact, there is no absolute prohibition on the right to carry on the trade or business in such cases, but it is only a restriction imposed by the Commissioner in the license in the nature of confining it to an industrial zone so that

it does not become a health hazard or source of nuisance to the general public.

18. It is however, difficult to accept the contention of the respondents that no hearing is required to be given before making a policy decision. Policy is the basis of administrative discretion in a great many cases, but it should be exercised fairly vis-a-vis any person who will be adversely affected. The decision will require the weighing of any such person's interest against the claims of policy; and this cannot fairly be done without giving that person an opportunity to be heard. Right to be heard ought to operate in the case of loss of livelihood, just as much as in the case of loss of property. In cases of affecting large number of individuals, it may be sufficient for their representatives to be heard on behalf of the whole class. The performance of duty to hear those affected before coming to a decision adverse and detrimental to their interest would, in fact, assist rather than inhibit the local authority in the performance of its licensing duties, because apart from fairness to the person adversely affected, there is another side to natural justice: it helps the administrator to take a better decision if he hears the objections to his policy from those who have the strongest interest in contesting it. The dominance of policy in no way affects the authority's duty to hear the affected person's case. What it affects is the weight that he may give to that case after he has heard it. The Courts have shown a strong disposition to bring licensing functions generally within their doctrine that administrative powers must be exercised fairly. The doctrine extends to decisions of licensing policy which affect a class of licence holders and not merely individual cases. Licensing is a drastic power, greatly affecting the rights and liberties of citizens and particularly, their livelihood and this alone demands fair administrative procedure. The intensity of judicial review will however, differ in accordance with the nature of the decision and it will be least intense where the decision involves matters of social and economic policy. The Court has to be careful not to inhibit public authorities from laying down policies, which are in consonance with the directive principles, since consistent administrative policies are not only permissible, but highly desirable. But the policies must naturally be based on proper relevant grounds.

18.1 There are however, no inflexible rules of natural justice of universal application. Each case depends on its own circumstance. In a matter involving policy

decision, the Court must always consider the statutory framework within which natural justice is to operate and a limit may sometimes necessarily be implied where elaborate hearing would scuttle the very purpose of achieving public good under the statute by abatement of hazards to health and public nuisance. What is essential is substantial fairness to those who are adversely affected. This can be adequately achieved by telling them the substance of the case has to meet, without disclosing the precise evidence or the sources of information. There should be given to the adversely affected person a fair opportunity to contradict what is said against him, as by giving him the gist of the objections forming the basis of restriction proposed to be imposed. In the present case the procedure which was adopted by the local authority in taking the decision for imposing a condition in the licence of carrying on the trade in question only in an industrial zone, was both suitable and fair in the circumstances of the case. The gist of the report of National Institute of Occupational Health was given in the annexure attached to the show cause notice and the petitioners very well knew as to the objections which they were required to meet. We are therefore of the view that the impugned decision has been taken after giving a fair hearing to the petitioners.

19. The contention of the petitioners that since licences were being issued for such trade by the Municipal Commissioner and renewed from time to time without the condition of doing such trade or its operations in an industrial zone, the legitimate expectations of the citizens doing this business cannot be flouted by a change in the licensing policy, is misconceived. The power to lay policy by executive decision or by legislation includes power to withdraw the same unless in the former case, it is by malafide exercise of power or the decision or action is taken in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. In such matters, the Court gives a large leeway to the executive and the legislature. A prior decision to issue licences without restriction about place of trade would not, in our opinion, bind the local authority for all time to come. When the Municipal Corporation or the Commissioner is satisfied that change in licensing policy was necessary in public interest, it would be entitled to revise the policy and introduce a restrictive condition like the present one requiring the trade to be carried out only in the industrial zone so that the health hazards and nuisance are prevented in other areas. This

view gains its strength from the decision of the Hon'ble Supreme Court in the case of PTR Exports (Madras) Pvt.Ltd. Vs. Union of India, reported in (1996) 5 SCC 268. The decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. The choice of policy rests with the decision maker and not with the Court. As held in P.C Limited Vs. Union of India, reported in AIR 1999 S.C 1801, the legitimate substantive expectation merely permits the Court to find out if the change in the policy which was the cause for defeating the legitimate expectation was irrational or perverse or one which no reasonable person could have made. In the present case, the decision of the local authority of imposing the condition of confining the said trade to industrial zone, can never be said to be irrational or perverse. In fact, it is reasonable, proper and warranted by Constitutional and Statutory policy of promoting public health and of preventing pollution and health hazards.

20. The question is whether the local authority has acted arbitrarily or ultra-vires its powers in imposing the policy condition that such trade should be done only in an industrial area. In considering whether the local authority has acted unreasonably, the Court is only entitled to investigate the action of the authority with a view to seeing, if it has taken into account any matters that ought not to be or disregarded the matters that ought to be taken into account. The Court does not act as an appellate authority over its decision, but would interfere only as a judicial authority concerned to see whether it has contravened the law by exceeding its power. It is for those who assert that the local authority has contravened the provisions of the law, to establish that proposition. On the face of it, the condition imposed in this case is perfectly lawful. It appears to us quite clear that the matter dealt with by this condition was a matter which a reasonable authority would be justified in considering while making up its mind what condition should be attached to the grant of such licence. Nobody could say that well-being and physical health of the residents of a locality by assuring them pollution free environment and abatement of nuisance is not a matter which a local authority in exercise of its powers, can properly have in mind. It is clear that the local authorities are statutorily entrusted with the decision on a matter which the knowledge and experience of that authority can best be trusted to deal with. The subject matter with which the condition deals is one relevant for its consideration. The local authority has considered it and come to a

decision upon it. For interference by the Court in such cases something overwhelming is required which would clearly show that the decision on a competent matter is so unreasonable that no reasonable authority can ever come to it. The facts of this case do not come anywhere near anything of that kind. It cannot be said that such a decision to abate public nuisance from the area and prevent hazards to public health, is a decision that no reasonable body could have come to.

20.1 There can be honest difference of views held by different people but the Court is not required to be an arbiter of the correctness of one view over another. If the local authority has acted within the four corners of its jurisdiction in consonance with the Constitutional directives, the Court, in our opinion, cannot interfere. The Municipal Corporation and the Municipal Commissioner were entitled to consider matters relating to the welfare of a section of the community and the condition of this nature requiring the trade in gold and silver melting and refineries to be carried on only in an industrial zone, thereby effectively preventing it in other areas, is, in our opinion, in no way unreasonable or arbitrary. It is a perfectly reasonable and proper restriction warranted by the Constitutional and Statutory principles noted above. The local authority has not contravened the law or acted in excess of its power in any manner in this case. All these three petitions are therefore, rejected. There shall be no order as to costs.

20.2 The rejection of these petitions will not preclude the State Government from assisting the petitioners in re-establishing themselves in the industrial zones.

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